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**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1133 of 2016**

- Tulsi @ Rajendra Tiwari S/o Devi Prasad Tiwari Aged About 27 Years  
R/o Jait Navagaon, Lormi, District Mungeli, Chhattisgarh .

**---- Petitioner****Versus**

1. Neelam Tiwari W/o Tulsi @ Rajendra Tiwari R/o Village Kadhar,  
Police Station Chakarbhata, District Bilaspur, Chhattisgarh.
2. State Of Chhattisgarh Through Police Station Mahila Thana,  
Bilaspur, Chhattisgarh.

**---- Respondents**


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For Petitioner  
For State

Shri T.K. Tiwari, Advocate  
Shri. Satish Gupta, Government Advocate

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**SB: Hon'ble Shri Justice P.Sam Koshy****Order On Board****07.10.2016**

1. The present Petition under Section 482 Cr.P.C. has been filed assailing the registration of the complaint case against the Petitioner for the alleged offence under Section 294, 323, 506-II and 498-A IPC.
2. The grievance of the Petitioner is firstly the procedure adopted by the Court below before registration of the complaint is contrary to the rules prescribed in the Cr.P.C. as well as the normal procedure which a Court undertakes. Secondly, duration of the period of stay of the

complainant with the husband was so short a period that by no stretch of imagination can it be said to have occurred at all.

3. So far as the first objection is concerned this Court is of the opinion that proceedings that were adopted by the Court below prior to the registration of the complaint may not be an issue by which the Petitioner should get aggrieved with, for the reason that his role would come into play only after the complaint is registered and there is no reason for the Petitioner to challenge the proceeding prior to registration. So far as second ground of short duration with the respondent wife is concerned it is a matter of evidence which have to be thrashed out after either side of the dispute leads their respective evidence where the parties would also get an opportunity of cross-examining.
4. The Supreme Court in its recent decision reported in **(2015) 3 SCC 424** in case of **Sonu Gupta vs Deepak Gupta & Ors** in a very categorical term in paragraph No. 8 & 9 held as under:

**“8.....**At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

- 9.** It is also well settled that cognizance is taken of the offence and not the offender. Hence, at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are

absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

5. Considering the view of the Supreme Court and also taking note of the factual position of the case, this Court is of the opinion that no strong case has been made out calling for interference with the action initiated by the Court below.
6. Accordingly, the present CrMP being devoid of merit stands rejected.

**Sd/-**

**(P. Sam Koshy)**  
**JUDGE**